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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 7327/2018**

P. N. TIWARI

..... Petitioner

Through Mr. Ankur Chhibber, Advocate

versus

UNION OF INDIA AND ORS.

..... Respondents

Through Mr. Vijay Joshi, Advocate

**CORAM:**

**JUSTICE S.MURALIDHAR**

**JUSTICE TALWANT SINGH**

**ORDER**

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**03.12.2019**

**Dr. S. Muralidhar, J.:**

1. Aggrieved by the non-expunction of the adverse remarks in his Annual Performance Appraisal Report ('APAR') for the period between 1<sup>st</sup> April, 2015 and 31<sup>st</sup> March, 2016, the Petitioner who is an Assistant Commandant in the Central Reserve Police Force ('CRPF') has filed the present petition. He also challenges the rejection of his representations against the adverse remarks by the orders dated 1<sup>st</sup> March, 2017, 1<sup>st</sup> May, 2017 and 31<sup>st</sup> August, 2017.

2. The Petitioner joined the CRPF as Sub-Inspector on 21<sup>st</sup> October, 1993. He was promoted as Inspector on 17<sup>th</sup> January, 2003. The Petitioner states that his performance has consistently been assessed as 'very good' by his superior officers. On 5<sup>th</sup> September, 2007 he was promoted as Assistant

**W.P.(C) 7327/2018**

*Page 1 of 8*

Commandant (AC) and thereafter, posted to the 13<sup>th</sup> Battalion in Jharkhand.

3. On 13<sup>th</sup> June, 2009 the Petitioner met with a car accident in which he and his family members sustained severe injuries. The Petitioner suffered multiple fractures in his right leg and both hands due to which he was bed ridden for over a year. He had to undergo five fracture surgeries during this period. As a result, the Petitioner was assigned in the 'Shape-II permanent' medical category.

4. In May, 2011 the Petitioner was posted from 13<sup>th</sup> Battalion, Jharkhand to the Group Centre, Lucknow. He remained there till 29<sup>th</sup> October, 2014. Thereafter, he was posted with the Group Centre, Amethi on 29<sup>th</sup> October, 2014 and once again was graded 'very good' for the period from 29<sup>th</sup> October, 2014 to 31<sup>st</sup> March, 2015.

5. Along with a covering letter dated 23<sup>rd</sup> June, 2016, the Petitioner received a copy of the APAR for the period between 1<sup>st</sup> April, 2015 and 31<sup>st</sup> March, 2016. In it, it was noted that the following adverse remarks had been made in the pen picture by his Reporting Officer i.e. the Commandant, Group Centre, CRPF, Amethi:

"As placed permanently in low medical category and due to uncertainty of professional career affected his attitude. He is expert in quoting rules and always say "This is not my work", absence of collective team spirit in performing any type of duty. Yet full of possibilities. Moreover during the reporting period level of disposition of duties of officer was "GOOD"."

6. As a result, his grading was given as 5.97. The Reviewing Officer,

namely, the Deputy Inspector General of Police, DIG, CRPF, Amethi agreed with the Reporting Officer and this was accepted by the Accepting Authority.

7. The Petitioner has in a tabular form depicted the gradings in his ACRs for the period 1<sup>st</sup> April, 2012 onwards till 31<sup>st</sup> March, 2017 as under:

| <b>Sl.No.</b> | <b>Period</b>         | <b>Grading</b> | <b>Accepting Authority</b> |
|---------------|-----------------------|----------------|----------------------------|
| 1.            | 01.04.2012-31.03.2013 | V.Good         | V.Good                     |
| 2.            | 01.04.2013-31.03.2014 | V.Good         | V.Good                     |
| 3.            | 1.04.2014-18.10.2014  | V.Good         | V.Good                     |
| 4.            | 29.10.2014-31.03.2015 | V.Good         | V.Good                     |
| 5.            | 1.04.2015-1.04.2016   | <b>Good</b>    | <b>Good</b>                |
| 6.            | 1.04.2016- 31.03.2017 | V.Good         | V.Good                     |

8. According to the Petitioner, despite his medical condition, the APAR showed that he had been working to the best of his ability, and except for the period in question, throughout, his performance had been consistently assessed as 'very good'. The Petitioner's representations dated 19<sup>th</sup> August, 2016, 20<sup>th</sup> March, 2017 and 10<sup>th</sup> August, 2017 were rejected by the orders dated 1<sup>st</sup> March, 2017, 1<sup>st</sup> May, 2017 and 31<sup>st</sup> August, 2017 respectively.

9. *Inter-alia*, in the petition the Petitioner has contended that no specific instances were brought to the attention of the Petitioner by the Respondents about any shortcoming and no opportunity was afforded to him to correct

the alleged mistake. It is accordingly contended that the making of the adverse entries was contrary to the law explained by the Supreme Court as well as this Court in several decisions.

10. In response to the notice issued in the petition, a counter affidavit has been filed by the Respondents where the essential facts are not in dispute. Enclosed with the counter affidavit is a copy of an 'Advisory Letter' addressed to the Petitioner by his Commandant where *inter-alia* reference is made to an incident of 17<sup>th</sup> December, 2015 when the 'Kote' was inspected by the DIG. The Kote Commander, an ASI (GD), apparently stated that he was not aware of the new 'Kote Management System' and that the DIG was surprised to note that when he reached the Kote he could not find anyone present. The Advisory note proceeded to allege that the Petitioner being the Company Commander, had not directed his subordinates to implement the orders of the DIG and that it was his prime responsibility to train all the Head Constables in it.

11. Incidentally, this note is by the same Commandant who is the Reporting Officer *qua* the APAR in the question for the period between 1<sup>st</sup> April, 2015 and 31<sup>st</sup> March, 2016. It is not disputed by the Respondents that for all the years preceding and subsequent to the aforementioned period, the grading of the Petitioner has remained as 'very good'. It is further averred that "on many occasions the Petitioner was also given verbal instructions but that he failed to show any improvements". However, the dates on which such 'verbal instructions' were given, and by whom, are not stated by the Respondents.

12. The perusal of the pen picture shows that it has internal contradictions. Earlier in the same APAR in Column 5 about the Petitioner's attitude towards SCs/STs/weaker sections it is stated 'cordial'. The Petitioner appears to have scored well on 'sense of responsibility', maintenance of discipline, communication skills, leadership qualities, capacity to work in team spirit and 'aptitude and potential'. Therefore, the remark that there was an 'absence of collective team spirit', does not square up with the actual assessment on these parameters in the earlier part of the APAR. The remark that the Petitioner's low medical category had introduced uncertainty in his professional career and affected his attitude is also not consistent with the fact that for the years after the accident and in the year, even after the year in question, the Petitioner's performance has been rated as 'very good'.

13. The Advisory Letter stated to be issued to the Petitioner has no bearing on the pen picture. In other words, the pen picture does not refer to any failure by the Petitioner to train his subordinates in the new 'Kote Management System'.

14. Consequently, this does not satisfy the requirement in law that the failure to perform the responsibility adequately must be brought to the attention of the officer and he must be given a chance to correct himself. Apropos what is stated in the pen picture, there is nothing brought on record by the Respondents to show that the Petitioner was ever issued any warning or opportunity to correct his mistake. The contention that he was given verbal advice is at best vague because there are no particulars of the dates on which such 'verbal advice' was given.

15. The adverse entries, therefore, do not satisfy the requirement of the law as explained in several decisions of the Supreme Court. Illustratively, in ***M.A.Rajasekhar v. State of Karnataka 1996 (10) SCC 369*** it is explained as under:-

“adverse remarks must be pointed out with reference to specific instances in which he did not perform that duty satisfactorily so that he would have an opportunity to correct himself of the mistake. He should be given an opportunity in the cases where he did not work objectively or satisfactorily. Admittedly, no such opportunity was given. Even when he acted in a dilemma and lacked objectivity, in such circumstances, he must be guided by the Authorities as to the manner in which he ought to have acted upon. Since this exercise has not been done by the Respondents, the said adverse remarks was not consistent with law.”

16. Likewise in ***Sukhdeo v. Commissioner Amravati Division (1996) 5 SCC 103*** it was held as under:

"When an officer makes the remarks he must eschew making vague remarks causing jeopardy to the service of the subordinate officer. He must bestow careful attention to collect all correct and truthful information and give necessary particulars when he seeks to make adverse remarks against subordinate officer whose career prospect and service were in jeopardy. In this case, the controlling officer has not used due diligence in making remarks. It would be salutary that the controlling officer before writing adverse remarks would give prior sufficient opportunity in writing by informing him of the deficiency it noticed for improvement. In spite of the opportunity given if the officer/employee does not improve then it would be an obvious fact and would form material basis in support of the adverse remarks. It should also be mentioned that he had given prior opportunity in writing for improvement and yet was not availed of so that it would form part of the record. The power exercised by the controlling officer is per se illegal. "

17. Thereafter in ***State of U.P v. Yamuna Shankar Mishra 1997 (4) SCC 7***

it was observed as under:

".....Before forming an opinion to make adverse entries in the confidential reports, the reviewing reporting officers should share the information which is not a part of the record, with the officer concerned. This amounts to an opportunity given to the erring/ corrupt officer to correct the errors of the judgement, conduct, behavior, integrity or corrupt proclivity."

18. In *Inspector GD Krishna Rajak v. Union of India 2012 SCC online Del 4454* it was observed as under:

“it is not possible that for 11 years a person is either ‘Very Good’ or ‘Outstanding’ and then for one year he drops to ‘Average’ and then regains ‘Very Good’ and ‘Outstanding’ in the next three years.”

19. This Court has recently in a decision dated 13<sup>th</sup> November, 2019 in W.P.(C) No. 9175/2017 (*Dr. Umesh Sikarwar vs. Union of India*) followed the above decisions and in similar circumstances expunged the adverse remarks.

20. In the present case, barring the year in question, the Petitioner has been consistently assessed as very good for the preceding and succeeding years.

21. In the circumstances, the Court directs that the aforementioned adverse remarks for the APAR from 1<sup>st</sup> April, 2015 to 31<sup>st</sup> March, 2016 shall stand expunged. A direction is issued to the Respondents to hold a Review DPC to consider the Petitioner for the grant of the benefits under the Modified Assured Career Progression Scheme, ignoring the above adverse remarks and below benchmark grading and if found fit, to grant the Petitioner the said benefit as well as all the consequential benefits from the date he became

entitled to them. This exercise be completed within twelve weeks from today.

22. The petition is allowed in the above terms, but in the circumstances with no order as to costs.

**S. MURALIDHAR, J.**

**TALWANT SINGH, J.**

**DECEMBER 03, 2019**

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